

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2595 of 1993

SPECIAL CIVIL APPLICATION No 2596 of 1993

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SPECIAL CIVIL APPLICATION No 2597 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2.	To be referred to the Reporter or not?	No	ep
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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge? No

COMPETENT AUTHORITY & ADDL COLLECTORR

Versus

ASHOKKUMAR I PRAJAPATI

Appearance in Spl.C.A. No. 2595 & 2596 of 1993:

Mr.L.R. Poojari AGP for Petitioner

Mr. R.S. PANDYA for Respondent No. 1

Respondent No. 2 dead

Appearance in Spl. C.A. No. 2597 of 1993:

Mr. L.R. Poojari, AGP for petitioner
Mr. K.V. Shelat for Respondent No.1
Respondent No.2 dead

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 29/10/96

ORAL COMMON JUDGEMENT

1. These three Special Civil Applications are filed under Article 227 of the Constitution of India by the Competent Authority and Additional Collector, Ahmedabad, against the judgment and order dated 29th April, 1991 rendered by the Urban Land Ceiling Tribunal, Ahmedabad, in Appeal Nos. 151/91, 152/91 and 153/91. The respondent No. 1 in each petition is admittedly the son, heir and legal representative of respondent No.2 and respondent No.2 is the father who has expired during the pendency of this proceeding. The judgment and order which is passed by the Tribunal on 29th April, 1991 is virtually one of remanding the matter to the Competent Authority with direction to process the applications made by respondent No.1 in each petition under Section 21 of the Urban Land (Ceiling and Regulation) Act, 1976 and to pass appropriate order thereon under Section 21. While so directing, the Tribunal has quashed and set aside the order passed by the Competent Authority on 30th April, 1990 whereby the Competent Authority after processing the application made by respondent No.1 in each petition under Section 21 of the said Act rejected the same mainly on the ground that the property was notionally partitioned only in the year 1978 i.e. after coming into force of the aforesaid Act in 1976 and that therefore the respondent No.1 in each case was the illegal transferee and was not entitled to apply under Section 21 of the said Act.

2. In order to appreciate the legal submissions made by the learned Assistant Government Pleader as well as by the learned Counsel appearing for respondent No.1 in each petition, the following relevant facts are set out:

- (i) One Ishwarlal Madhavlal Prajapati, since deceased, respondent No.2 herein, purchased by registered sale deed property bearing Survey Nos. 204 and 206 at village Motera, measuring 11750.81 Sq.meters and immediately after purchase

mutation entry in the record of rights was posted on 16th November, 1996 being Mutation Entry No. 3082.

(ii) Since it was the self-acquired and individual property of deceased Ishwarlal Madhavlal Prajapati, he, by his own voluntary act, threw the said property into the common hotch potch of Hindu Undivided Family comprising of himself and his three sons who are respondents No.1 in each petition and declaration made by him on 22nd of October, 1970. It may be noted at this stage that throwing of self-acquired property in the common hotch potch of HUF property by the owners of the property is a device held to be permissible and legal by the Hon'ble Supreme Court of India in its decision in the case of *GOLI ESWARIAH v. COMMISSIONER OF GIFT TAX, ANDHRA PRADESH*, reported in 1970 SC 1722. It cannot therefore be doubted that by a simple declaration Ishwarlal Madhavlal Prajapati was entitled in law to throw his self-acquired property to the hotch - potch of HUF property and that being his voluntary act, the property acquired the HUF character. It can be noted that this act was done by the father well in advance in 1970 for which even a mutation entry being Mutation Entry No. 3345 was made in the record of rights on 16th April, 1971 pursuant to which even names of three sons of Ishwarlal Madhavlal Prajapati were included in the record of rights. The act was not done in anticipation of coming into force of Urban Land (Ceiling & Regulation) Act, 1976. The property therefore, prima facie acquired all characteristics of HUF property between the father and the three sons.

(iii) It appears that thereafter the said property was notionally partitioned on 21st January, 1978 by the father and necessary mutation entry No. 3592 was posted in the village record on 21st of July, 1978. It is this act of notionally partitioning the property in 1978 which has been utilised by the Competent Authority to hold that in fact the property was of Ishwarlal Madhavlal Prajapati and that partition was effective only after coming into force of the said Act.

(iv) It appears from the record that within the time prescribed by the Act, Ishwarlal Madhavlal Prajapati - deceased - respondent No.2 filled in

Form No.1 showing himself the Kartha of HUF and showing the said property as belonging to HUF.

(v) It appears that thereafter on 23rd of September, 1988, the three sons, namely, respondent No.1 in each petition filed application under Section 21 of the said Act for developing the said property for weaker sections of the society by putting up construction of dwelling houses.

(vi) By judgment and order dated 30th April, 1990, the Competent Authority processed the said applications and rejected the said applications mainly on the ground that even notional partition has taken place after coming into force of the said Act and, therefore, the three sons, respondent No.1 in each petition were the illegal transferees and they have no right to apply under Section - 21 of the Act. The applications under Section 21 therefore came to be rejected.

3. Being aggrieved by such judgment and order of the Competent Authority, the aforesaid three appeals were preferred by each respondent No.1 to Urban Land Ceiling Tribunal duly constituted and empowered to hear appeal under Section 33 of the said Act. The Tribunal while deciding the appeal found that there was much substance in the say of deceased father as well as the three sons and that in fact partition of the HUF property did not amount to transfer of property from one co-sharer to another but it is simply ascertainment of the share of the co-sharers or co-parceners and partition thereof by metes and bounds as per existing share in the property which is simply ear marked or ascertained in the process of partition and, therefore, it cannot be said to be a transfer of property within the meaning of the said term as defined under the Transfer of Property Act, 1892. The position of law on this aspect is well settled by the decision of the Apex Court in the case V.N. SARIN v. AJIT KUMAR POPLAI, reported in AIR 1966 SC 432. This Court therefore need not deal with on this primary principle of law which is settled by the Apex Court of the Country. The Tribunal having found that there was already throwing of property into common hotch potch as back as 1970 by the father supported by the relevant mutation entry in the village record, it was not right to hold that there was partition of the property in the year 1978 i.e. after coming into force of the Urban Land (Ceiling & Regulation) Act, 1976. The Tribunal took the view that the Competent Authority erred on this point and was not justified in holding that in fact there was

transfer of share in favour of each son by notional partition effected on 21st of January, 1978. The Tribunal therefore quashed and set aside the judgment and order of the Competent Authority and it further directed the Competent Authority to process the application of each son under Section 21 in accordance with law and to pass appropriate order thereon consistent with the provisions of Section 21 of the said Act. For this second purpose, namely of, deciding the applications filed by his sons under Section 21 of the Act in accordance with law, the Tribunal virtually remanded the matter to the Competent Authority.

4. Against such judgement and order of the Tribunal, where the matter is simply remanded to the Competent Authority by the Tribunal and where settled position of law is followed by the Tribunal, the Competent Authority has preferred the present group of petitions under Article 227 of the Constitution of India.

5. On the above facts Mr. L.R. Pujari, learned Assistant Government Pleader submitted before the Court that once the notional partition was effected only in 1978, that the act which was done after coming into force of the said Act of 1976 and therefore the transaction was hit by the provisions of the said Act of 1976. He further submitted that partition of HUF property is "transfer of property" and that the Competent Authority was justified in rejecting the application of each applicant under Section 21 of the said Act.

6. However, when Mr. L.R. Pujari, learned Assistant Government Pleader was confronted with the binding decisions of the Apex Court in the case of V.N. SARIN (supra) and the decision of this Court in the case of DHARAMDAS BABUBHAI KANSARA v. G.R. RAO, reported in 35(1) GLR 337, going through the aforesaid binding precedents of the Apex Court as well as this Court and having realised that the declaration was already made by deceased father Ishwarlal Madhavlal Prajapati as back as 1970 throwing the property into common hotch potch of HUF and that mutation entry to that effect was also effected in the village record on the very year, the learned Assistant Government Pleader found that his submission on partition amounts to transfer has no merit and that the decisions of the Apex Court being binding on all courts of law and tribunals, it must be followed. Mr. R.S. Pandya, learned Counsel appearing for respondent No.1 in first two petitions and Mr.K.V. Shelat, learned Counsel appearing for respondent No.1 in the third petition, vehemently opposed the granting of any relief to the

Competent Authority in this proceeding firstly on the ground that no Special Civil Application could be preferred by the Competent Authority to this Court under Article 227 of the Constitution of India it being subordinate to a Tribunal. Secondly, it was submitted that the order of the Tribunal was one of remand simpliciter and therefore also no interference of this Court was called for. Lastly it was submitted that the tribunal has followed the well settled principle of law and therefore also no interference of this Court is called for.

7. Having given my anxious thoughts and considerations to the aforesaid rival submissions made by learned Assistant Government Pleader as well as by the learned Counsel appearing for respondent No.1 in each petition and more particularly in view of the well settled legal position that self-acquired property can be thrown into the common hotch potch of HUF property by simple declaration and that in such case the property would acquire the ingredients of HUF property and secondly keeping in view the fact that the partition of undivided HUF property as such does not result into transfer of property and it is only ascertaining of preexisting or subsisting share of co-parceners, the Tribunal was preeminently justified in reaching the conclusion which it has reached and no interference of this Court is called for under Article 227 of the Constitution of India. No error of jurisdiction is pointed out to this Court nor any error of law apparent on the face of the record is brought to the notice of this Court. In view of the aforesaid, this group of petitions is liable to be dismissed and is hereby dismissed. Rule is accordingly discharged in each petition and interim relief granted earlier by the learned Single Judge stands vacated.
